

SHB 1100 - S COMM AMD 437
By Senator Swecker

ADOPTED 04/26/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 20.01.010 and 1991 c 174 s 1 are each amended to read
4 as follows:

5 As used in this title the terms defined in this section have the
6 meanings indicated unless the context clearly requires otherwise.

7 (1) "Director" means the director of agriculture or (~~his~~) a duly
8 authorized representative.

9 (2) "Person" means any natural person, firm, partnership, exchange,
10 association, trustee, receiver, corporation, and any member, officer,
11 or employee thereof or assignee for the benefit of creditors.

12 (3) "Agricultural product" means any unprocessed horticultural,
13 vermicultural and its byproducts, viticultural, berry, poultry, poultry
14 product, grain, bee, or other agricultural products, and includes mint
15 or mint oil processed by or for the producer thereof and hay and straw
16 baled or prepared for market in any manner or form and livestock.

17 (4) "Producer" means any person engaged in the business of growing
18 or producing any agricultural product, whether as the owner of the
19 products, or producing the products for others holding the title
20 thereof.

21 (5) "Consignor" means any producer, person, or his agent who sells,
22 ships, or delivers to any commission merchant, dealer, cash buyer, or
23 agent, any agricultural product for processing, handling, sale, or
24 resale.

25 (6) "Commission merchant" means any person who receives on
26 consignment for sale or processing and sale from the consignor thereof
27 any agricultural product for sale on commission on behalf of the
28 consignor, or who accepts any farm product in trust from the consignor
29 thereof for the purpose of resale, or who sells or offers for sale on

1 commission any agricultural product, or who in any way handles for the
2 account of or as an agent of the consignor thereof, any agricultural
3 product.

4 (7) "Dealer" means any person other than a cash buyer, as defined
5 in subsection (10) of this section, who solicits, contracts for, or
6 obtains from the consignor thereof for reselling or processing, title,
7 possession, or control of any agricultural product, or who buys or
8 agrees to buy any agricultural product from the consignor thereof for
9 sale or processing and includes any person, other than one who acts
10 solely as a producer, who retains title in an agricultural product and
11 delivers it to a producer for further production or increase. For the
12 purposes of this chapter, the term dealer includes any person who
13 purchases livestock on behalf of and for the account of another, or who
14 purchases cattle in another state or country and imports these cattle
15 into this state for resale.

16 (8) "Limited dealer" means any person (~~operating~~) who buys,
17 agrees to buy, or pays for the production or increase of any
18 agricultural product by paying to the consignor at the time of
19 obtaining possession or control of any agricultural product the full
20 agreed price of the agricultural product and who operates under the
21 alternative bonding provision in RCW 20.01.211.

22 (9) "Broker" means any person other than a commission merchant,
23 dealer, or cash buyer who negotiates the purchase or sale of any
24 agricultural product, but no broker may handle the agricultural
25 products involved or proceeds of the sale.

26 (10) "Cash buyer" means any person other than a commission
27 merchant, dealer, or broker, who obtains from the consignor thereof for
28 the purpose of resale or processing, title, possession, or control of
29 any agricultural product or who contracts for the title, possession, or
30 control of any agricultural product, or who buys or agrees to buy for
31 resale any agricultural product by paying to the consignor at the time
32 of obtaining possession or control of any agricultural product the full
33 agreed price of the agricultural product, in coin or currency, lawful
34 money of the United States. However, a cashier's check, certified
35 check, credit card, or bankdraft may be used for the payment. For the
36 purposes of this subsection, "agricultural product," does not include
37 hay, grain, straw, or livestock.

1 (11) "Agent" means any person who, on behalf of any commission
2 merchant, dealer, broker, or cash buyer, acts as liaison between a
3 consignor and a principal, or receives, contracts for, or solicits any
4 agricultural product from the consignor thereof or who negotiates the
5 consignment or purchase of any agricultural product on behalf of any
6 commission merchant, dealer, broker, or cash buyer and who transacts
7 all or a portion of that business at any location other than at the
8 principal place of business of his employer. With the exception of an
9 agent for a commission merchant or dealer handling horticultural
10 products, an agent may operate only in the name of one principal and
11 only to the account of that principal.

12 (12) "Retail merchant" means any person operating from a bona fide
13 or established place of business selling agricultural products twelve
14 months of each year.

15 (13) "Fixed or established place of business" for the purpose of
16 this chapter means any permanent warehouse, building, or structure, at
17 which necessary and appropriate equipment and fixtures are maintained
18 for properly handling those agricultural products generally dealt in,
19 and at which supplies of the agricultural products being usually
20 transported are stored, offered for sale, sold, delivered, and
21 generally dealt with in quantities reasonably adequate for and usually
22 carried for the requirements of such a business, and that is recognized
23 as a permanent business at such place, and carried on as such in good
24 faith and not for the purpose of evading this chapter, and where
25 specifically designated personnel are available to handle transactions
26 concerning those agricultural products generally dealt in, which
27 personnel are available during designated and appropriate hours to that
28 business, and shall not mean a residence, barn, garage, tent, temporary
29 stand or other temporary quarters, any railway car, or permanent
30 quarters occupied pursuant to any temporary arrangement.

31 (14) "Processor" means any person, firm, company, or other
32 organization that purchases agricultural crops from a consignor and
33 that cans, freezes, dries, dehydrates, cooks, presses, powders, or
34 otherwise processes those crops in any manner whatsoever for eventual
35 resale.

36 (15) "Pooling contract" means any written agreement whereby a
37 consignor delivers a horticultural product to a commission merchant

1 under terms whereby the commission merchant may commingle the
2 consignor's horticultural products for sale with others similarly
3 agreeing, which must include all of the following:

4 (a) A delivery receipt for the consignor that indicates the variety
5 of horticultural product delivered, the number of containers, or the
6 weight and tare thereof;

7 (b) Horticultural products received for handling and sale in the
8 fresh market shall be accounted for to the consignor with individual
9 pack-out records that shall include variety, grade, size, and date of
10 delivery. Individual daily packing summaries shall be available within
11 forty-eight hours after packing occurs. However, platform inspection
12 shall be acceptable by mutual contract agreement on small deliveries to
13 determine variety, grade, size, and date of delivery;

14 (c) Terms under which the commission merchant may use his judgment
15 in regard to the sale of the pooled horticultural product;

16 (d) The charges to be paid by the consignor as filed with the state
17 of Washington;

18 (e) A provision that the consignor shall be paid for his pool
19 contribution when the pool is in the process of being marketed in
20 direct proportion, not less than eighty percent of his interest less
21 expenses directly incurred, prior liens, and other advances on the
22 grower's crop unless otherwise mutually agreed upon between grower and
23 commission merchant.

24 (16) "Date of sale" means the date agricultural products are
25 delivered to the person buying the products.

26 (17) "Conditioner" means any person, firm, company, or other
27 organization that receives turf, forage, or vegetable seeds from a
28 consignor for drying or cleaning.

29 (18) "Seed bailment contract" means any contract meeting the
30 requirements of chapter 15.48 RCW.

31 (19) "Proprietary seed" means any seed that is protected under the
32 Federal Plant Variety Protection Act.

33 (20) "Licensed public weighmaster" means any person, licensed under
34 the provisions of chapter 15.80 RCW, who weighs, measures, or counts
35 any commodity or thing and issues therefor a signed certified
36 statement, ticket, or memorandum of weight, measure, or count upon

1 which the purchase or sale of any commodity or upon which the basic
2 charge of payment for services rendered is based.

3 (21) "Certified weight" means any signed certified statement or
4 memorandum of weight, measure or count issued by a licensed public
5 weighmaster in accordance with the provisions of chapter 15.80 RCW.

6 (22) "Licensee" means any person or business licensed under this
7 chapter as a commission merchant, dealer, limited dealer, broker, cash
8 buyer, or agent.

9 **Sec. 2.** RCW 20.01.130 and 1993 sp.s. c 24 s 929 are each amended
10 to read as follows:

11 All fees and other moneys received by the department under (~~the~~
12 ~~provisions of~~) this chapter shall be paid to the director and (~~shall~~
13 ~~be~~) used solely for the purpose of carrying out (~~the provisions of~~)
14 this chapter and the rules adopted (~~hereunder or for departmental~~
15 ~~administrative expenses during the 1993-95 biennium~~) under this
16 chapter. All civil fines received by the courts as the result of
17 notices of infractions issued by the director shall be paid to the
18 director, less any mandatory court costs and assessments.

19 **Sec. 3.** RCW 20.01.140 and 1959 c 139 s 14 are each amended to read
20 as follows:

21 Any change in the organization of any firm, association, exchange,
22 corporation, or partnership licensed under (~~the provisions of~~) this
23 chapter shall be reported to the director and the licensee's surety or
24 sureties within thirty days.

25 **Sec. 4.** RCW 20.01.211 and 1983 c 305 s 5 are each amended to read
26 as follows:

27 (1) In lieu of the bonding provision required by RCW 20.01.210, any
28 dealer who buys, agrees to buy, or pays for the production or increase
29 of any agricultural product by paying to the consignor at the time of
30 obtaining possession or control of any agricultural product the full
31 agreed price of the agricultural product may file a bond in an amount
32 equal to the dealer's maximum monthly purchases, divided by (~~fifteen~~)
33 twelve, but the minimum bond (~~provided by~~) under this section shall

1 be (~~in a minimum of seven thousand five hundred~~) no less than ten
2 thousand dollars.

3 (2) Any dealer using the bonding provisions of this section shall
4 file an affidavit with the director that sets forth the dealer's
5 maximum monthly purchases from or payments to consignors. The
6 affidavit shall be filed at the time of application and with each
7 renewal.

8 (3) Any dealer bonded under this section who is found to be in
9 violation of this chapter shall be required to comply with the bonding
10 requirements of RCW 20.01.210 for a minimum of two years.

11 **Sec. 5.** RCW 20.01.240 and 1986 c 178 s 12 are each amended to read
12 as follows:

13 (1) (~~Except as provided in subsection (2) of this section,~~) Any
14 consignor who believes he or she has a valid claim against the bond of
15 a commission merchant or dealer shall file a claim with the director.
16 (~~Upon the filing of a claim under this subsection against any~~
17 ~~commission merchant or dealer handling any agricultural product, the~~
18 ~~director may, after investigation, proceed to ascertain the names and~~
19 ~~addresses of all consignor creditors of such commission merchant and~~
20 ~~dealer, together with the amounts due and owing to them by such~~
21 ~~commission merchant and dealer, and shall request all such consignor~~
22 ~~creditors to file a verified statement of their respective claims with~~
23 ~~the director. Such request shall be addressed to each known consignor~~
24 ~~creditor at his last known address.~~

25 (2) ~~Any consignor who believes he or she has a valid claim against~~
26 ~~the bond of a commission merchant or dealer in hay or straw, shall file~~
27 ~~a claim with the director within twenty days of the licensee's default.~~
28 ~~In the case of a claim against the bond of a commission merchant or~~
29 ~~unlimited dealer in hay or straw, default occurs when the licensee~~
30 ~~fails to make payment within thirty days of the date the licensee took~~
31 ~~possession of the hay or straw. In the case of a claim against a~~
32 ~~limited dealer in hay or straw, default occurs when the licensee fails~~
33 ~~to make payment upon taking possession of the hay or straw. Upon~~
34 ~~verifying the consignor's claim either through investigation or, if~~
35 ~~necessary, an administrative action, the director shall, within ten~~
36 ~~working days of the filing of the claim, make demand for payment of the~~

1 ~~claim by the licensee's surety without regard to any other potentially~~
2 ~~valid claim. Any subsequent claim will likewise result in a demand~~
3 ~~against the licensee's surety, subject to the availability of any~~
4 ~~remaining bond proceeds.))~~

5 (2) In the case of a claim against the bond of a commission
6 merchant or dealer in hay or straw, default occurs when the licensee
7 fails to make payment within thirty days of the date the licensee took
8 possession of the hay or straw or at a date agreed to by both the
9 consignor and commission merchant or dealer in written contract. In
10 the case of a claim against a limited dealer in hay or straw, default
11 occurs when the licensee fails to make payment upon taking possession
12 of the hay or straw.

13 (3) Upon the filing of a claim under this subsection against any
14 commission merchant or dealer handling any agricultural product, the
15 director may, after investigation, proceed to ascertain the names and
16 addresses of all consignor creditors of such commission merchant and
17 dealer, together with the amounts due and owing to them by such
18 commission merchant and dealer, and shall request all such consignor
19 creditors to file a verified statement of their respective claims with
20 the director. Such request shall be addressed to each known consignor
21 creditor at his last known address.

22 (4) For claims against a bond that have been filed by consignors
23 prior to the sixty-day deadline established in RCW 20.01.250, the
24 director shall investigate the claims and, within thirty days of
25 verifying the claims, demand payment for the valid claims by the
26 licensee's surety. The director shall distribute the proceeds of the
27 valid bond claims to the claimants on a pro rata basis within the
28 limits of the claims and the availability of the bond proceeds. If a
29 claim is filed after the sixty-day deadline established in RCW
30 20.01.250, the director may investigate the claim and may demand
31 payment for a valid claim. The director shall distribute the proceeds
32 of any such payment made by the surety to the claimant on a first-to-
33 file, first-to-be-paid basis within the limits of the claim and the
34 availability of any bond proceeds remaining after the pro rata
35 distribution. All distributions made by the director under this
36 subsection are subject to RCW 20.01.260.

1 **Sec. 6.** RCW 20.01.320 and 1959 c 139 s 32 are each amended to read
2 as follows:

3 The director on his or her own motion or upon the verified
4 complaint of any interested party may investigate, examine, or inspect
5 (1) any transaction involving solicitation, receipt, sale, or attempted
6 sale of agricultural products by any person or persons acting or
7 assuming to act as a commission merchant, dealer, broker, cash buyer,
8 or agent; (2) the failure to make proper and true account of sales and
9 settlement thereof as required under this chapter (~~(and/or)~~) or rules
10 (~~(and regulations)~~) adopted (~~(hereunder)~~) under this chapter; (3) the
11 intentional making of false statements as to conditions and quantity of
12 any agricultural products received or in storage; (4) the intentional
13 making of false statements as to market conditions; (5) the failure to
14 make payment for products within the time required by this chapter; (6)
15 any and all other injurious transactions. In furtherance of (~~(any)~~)
16 such an investigation, examination, or inspection, the director or
17 (~~(his)~~) an authorized representative(~~(r)~~) may examine that portion of
18 the ledgers, books, accounts, memoranda and other documents,
19 agricultural products, scales, measures, and other articles and things
20 used in connection with the business of (~~(such)~~) the person relating to
21 the transactions involved. For the purpose of (~~(such)~~) the
22 investigation the director shall at all times have free and unimpeded
23 access to all buildings, yards, warehouses, storage, and transportation
24 facilities or any other place where agricultural products are kept,
25 stored, handled, or transported. If the director is denied access, the
26 director may apply to any court of competent jurisdiction for a search
27 warrant authorizing access to the premises and records. The court may
28 upon the application issue the search warrant for the purposes
29 requested. The director may also, for the purpose of (~~(such)~~) the
30 investigation, issue subpoenas to compel the attendance of witnesses,
31 as provided in RCW 20.01.170, (~~(and/or)~~) or the production of books or
32 documents, anywhere in the state.

33 **Sec. 7.** RCW 20.01.410 and 1971 ex.s. c 182 s 12 are each amended
34 to read as follows:

35 (1) A copy of a manifest of cargo, on a form prescribed by the
36 director, shall be carried on any vehicle transporting agricultural

1 products purchased by a dealer or cash buyer, or consigned to a
2 commission merchant from the consignor thereof when prescribed by the
3 director. A bill of lading may be carried in lieu of a manifest of
4 cargo for an agricultural product other than hay or straw.

5 (2) Except as provided in subsection (3) of this section, the
6 commission merchant, dealer, or cash buyer of agricultural products
7 shall issue a copy of ((such)) the manifest or bill of lading to the
8 consignor of ((such)) the agricultural products and the original shall
9 be retained by the licensee for a period of ((one)) three years during
10 which time it shall be surrendered upon request to the director.
11 ((Such)) The manifest of cargo ((shall be)) is valid only when signed
12 by the licensee or his or her agent and the consignor or his or her
13 authorized representative of ((such)) the agricultural products.

14 (3) The commission merchant or dealer of hay or straw shall issue
15 a copy of a manifest to the consignor. The original copy shall be
16 retained by the commission merchant or dealer for a period of three
17 years during which time it shall be surrendered upon request to the
18 director. The manifest of cargo is valid only when signed by the
19 licensee or his or her agent and the consignor or his or her authorized
20 representative of hay or straw.

21 (4) Manifest forms will be provided to licensees at the actual cost
22 for the manifests plus necessary handling costs incurred by the
23 department.

24 **Sec. 8.** RCW 20.01.460 and 1989 c 354 s 43 are each amended to read
25 as follows:

26 (1) Any person who violates the provisions of this chapter or fails
27 to comply with the rules adopted under this chapter is guilty of a
28 gross misdemeanor, except as provided in subsections (2) ~~((and (3)))~~
29 through (4) of this section.

30 (2) Any commission merchant, dealer, or cash buyer, or any person
31 assuming or attempting to act as a commission merchant, dealer, or cash
32 buyer without a license is guilty of a class C felony who:

33 (a) Imposes false charges for handling or services in connection
34 with agricultural products.

35 (b) Makes fictitious sales or is guilty of collusion to defraud the
36 consignor.

1 (c) Intentionally makes false statement or statements as to the
2 grade, conditions, markings, quality, or quantity of goods shipped or
3 packed in any manner.

4 (d) With the intent to defraud the consignor, fails to comply with
5 the requirements set forth under RCW 20.01.010(10), 20.01.390, or
6 20.01.430.

7 (3) Any person who violates the provisions of RCW 20.01.040,
8 20.01.080, 20.01.120, 20.01.125, 20.01.410, or 20.01.610 has committed
9 a civil infraction.

10 (4) Unlawful issuance of a check or draft may be prosecuted under
11 RCW 9A.56.060.

12 **Sec. 9.** RCW 20.01.490 and 1986 c 178 s 5 are each amended to read
13 as follows:

14 Any person found to have committed a civil infraction under this
15 chapter shall be assessed a monetary penalty. No monetary penalty so
16 assessed may exceed (~~one~~) five thousand dollars. The director shall
17 adopt a schedule of monetary penalties for each violation of this
18 chapter classified as a civil infraction and shall submit the schedule
19 to the proper courts. Whenever a monetary penalty is imposed by the
20 court, the penalty is immediately due and payable. The court may, at
21 its discretion, grant an extension of time, not to exceed thirty days,
22 in which the penalty must be paid. Failure to pay any monetary
23 penalties imposed under this chapter shall be punishable as a
24 misdemeanor.

25 **Sec. 10.** RCW 20.01.610 and 1986 c 178 s 14 are each amended to
26 read as follows:

27 The director or (~~his~~) appointed officers may stop a vehicle
28 transporting (~~hay or straw~~) agricultural products upon the public
29 roads of this state if there is reasonable cause to believe the
30 carrier, seller, or buyer may be in violation of this chapter. Any
31 operator of a vehicle failing or refusing to stop when directed to do
32 so has committed a civil infraction.

33 The director and appointed officers shall work to ensure that
34 vehicles carrying perishable agricultural products are detained no
35 longer than is absolutely necessary for a prompt assessment of

1 compliance with this chapter. If a vehicle carrying perishable
2 agricultural products is found to be in violation of this chapter, the
3 director or appointed officers shall promptly issue necessary notices
4 of civil infraction, as provided in RCW 20.01.482 and 20.01.484, and
5 shall allow the vehicle to continue toward its destination without
6 further delay.

7 NEW SECTION. Sec. 11. In recognition of the significant losses
8 incurred by seed producers in the state from a recent seed company
9 bankruptcy and the increasing diversity of and changes in the state's
10 seed industry, the department of agriculture shall conduct a study of
11 alternative methods of reducing the risk of nonpayment of producers
12 from seed company bankruptcies and increasing the financial recovery
13 for seed producers should such bankruptcies occur. The study shall
14 evaluate alternative methods of addressing issues relating to
15 nonpayment of producers, including the potential of establishing an
16 indemnity fund, and how the costs of providing and maintaining such a
17 fund would be borne. The department shall evaluate whether
18 establishing an indemnity fund would be in addition to or as a
19 substitute for any current bonding requirements for various types of
20 seed crops and seed contracts, including bailment contracts. The
21 department shall establish an advisory committee including
22 representatives of producers and seed companies of various types of
23 agricultural seeds grown in this state to assist it in the study.

24 The department shall report the results of the study, including any
25 recommended legislation in bill form, to the governor and to the
26 appropriate committees of the legislature by December 1, 2003."

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ADOPTED 04/26/2003

27 On page 1, line 2 of the title, after "products;" strike the
28 remainder of the title and insert "amending RCW 20.01.010, 20.01.130,
29 20.01.140, 20.01.211, 20.01.240, 20.01.320, 20.01.410, 20.01.460,

1 20.01.490, and 20.01.610; creating a new section; and prescribing
2 penalties."

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